

**PLANNING COMMISSION MINUTES OF 02/23/04**

**2003-0903 - Councilmember Miller** [Appellant] - Appeal of a decision by the Administrative Hearing Officer approving a Variance from Sunnyvale Municipal Code 19.46.060 to allow a 14-foot front yard setback where 20 feet is required. The property is located at **777 The Dalles** in an R-0 (Low-Density Residential) Zoning District. (APN: 323-15-038) DO

Trudi Ryan, Planning Officer, presented the staff report. She summarized the application and noted that the Variance was granted by the Administrative Hearing Officer allowing a 16-foot front yard setback where 20 feet is required, noting the minimum setback of 15 feet for multiple home development projects. The Variance is needed in order to provide a two-car garage to meet the new parking requirement with the proposed expansion of the main house. The existing garage was legally converted into living space in 1985. She noted that the Administrative Hearing Officer was able to make the required Findings noting the unique situation associated with the property, the current orientation and the difficulty of re-converting the garage back to garage use. Councilmember Miller appealed the decision expressing concerns about the approved 16-foot front yard setback.

Comm. Simons commented that the staff report did not list the permit for the conversion of the garage in 1985. Ms. Ryan responded that staff report lists only Planning Permits issued and not Building Permits.

Comm. Hungerford asked what is the ramification if the Variance is denied. Ms. Ryan responded that if the Variance is denied, the garage would not have to be converted back, unless the addition to the house is still contemplated. Two covered parking spaces are required in order to accommodate an expansion. She added that because there is a 20-inch cement slab used as foundation for the converted garage, the conversion back to garage would cause an economic hardship to comply with the parking requirement.

Comm. Fussell asked staff if a carport is sufficient for the required two covered parking. Ms. Ryan responded that it could be used; however, a carport would still be subject to setback requirements. She added, however, that a garage is generally the preferred option for the required covered parking.

**Chair Babcock opened the public hearing.**

**Gil Frostig**, applicant, demonstrated with a PowerPoint presentation how the addition would be accomplished. He stated that there is an extraordinary circumstance to allow the remodeling and that the expansion is not materially detrimental. He explained the reasons why the deviation is being requested and noted that he was able to make the required Findings to grant the Variance.

Comm. Simons asked if the proposed design is more costly than removing the wall to accommodate his remodeling. Mr. Frostig responded that the entire garage has to be destroyed to accommodate the expansion therefore would be more costly. He added that the new design would increase the value of his property while remaining in conformance with the new ordinance.

Chair Babcock asked staff to clarify the actual variance requested whether 14 feet or 16 feet front yard setback. Ms. Ryan explained that the original application was for a 14-foot front yard setback but the Administrative Hearing approved a 16-foot setback where 20 feet is required.

**Chair Babcock closed the public hearing.**

**Vice Chair Moylan made a motion on Item #2003-0903 to deny the appeal and uphold the decision of the Administrative Hearing Officer approving the Variance. Comm. Simons seconded.**

Vice Chair Moylan commented that the applicant articulated clearly that the required Findings were met to warrant approval of the Variance and Design Review. He noted that he felt this applicant was better prepared than most. He agreed with the applicant and staff that the circumstances of the property are unique and that the expansion would present an economic hardship thus making the first Finding. Regarding the second Finding, he noted the house across the street from a park and that the neighbors are happy. He also agreed with the Third Finding as there is probably not another house in Sunnyvale with the same set of circumstances. He also agreed with the appellant in forwarding the application to Planning Commission to further review the requested deviation. He was pleased with the applicant's presentation and recommended upholding the decision of Administrative Hearing Officer.

Comm. Simons expressed his concerns about the proposed Variance. One of his concerns is that there are a variety of home designs that make additions more or less difficult but do not suggest the need for a variation in the code. He understood that the proposal is close to the setback allowable to multi-property development. Overall, he felt that allowing the Variance would be a special privilege given to the applicant.

Chair Babcock did not support the motion. She stated that the argument of the cost factor is not compelling but rather would be an unfair privilege granted to the applicant. She further stated that the street is very established with a nice streetscape. She was unable to make the required Findings and urged the Commission to adhere to the required 20 feet setback.

**Motion failed 3-4 with Chair Babcock, Comms. Fussell, Hungerford and Simons dissenting.**

**FINAL MOTION:**

**Comm. Simons made a motion on Item #2003-0903 to grant the appeal and deny the Variance. Comm. Fussell seconded.**

Comm. Simons stated that he was unable to make the required Findings; therefore, cannot grant the Variance.

Vice Chair Moylan emphasized that the circumstance is unique and unusual and that approval of the Variance is warranted. All that the applicant desires is to extend the side of his house but because of the new parking requirement, the setback deviation is needed in order to allow him the expansion while remaining in compliance. He added that the Variance criteria do not address the cost associated with the remodel. He agreed with staff's recommendation.

Comm. Simons stated that the main reason for the Variance is that cost being extraordinary and he felt that it is not enough reason to grant the Variance.

**Motion carried 4-3 with Vice Chair Moylan, Comms. Klein and Sulser dissenting.**

**Ms. Ryan stated that the decision is final unless appealed to City Council within the 15-day appeal period.**